

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

CHRISTOPHER LEE MCINTURFF

Petitioner,

Civil No. 10-367-SU

v.

FINDINGS AND  
RECOMMENDATION

WARDEN THOMAS,

Respondent.

SULLIVAN, Magistrate Judge.

By Order (#4) entered April 2, 2010, petitioner was allowed 30 days to either pay the filing fee or to file an application to proceed in forma pauperis, and advised that failure to do one or the other would result in the dismissal

of this proceeding.

Petitioner has not file an application to proceed in forma pauperis, or paid the filing fee, or requested an extension of time to do so.

Accordingly, petitioner's Petition (#1) should be denied without prejudice.

This proceeding should be dismissed. Petitioner's Motion for Appointment of Counsel (#2) should be denied as moot.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or

judgment entered pursuant to the Magistrate Judge's recommendation.

***Certificate of Appealability***

***Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. This cause is not appropriate for appellate review. See, 28 U.S.C. § 2253(c) (2) .***

DATED this 29th day of JULY, 2010.

s/ Patricia Sullivan  
Patricia Sullivan  
United States Magistrate Judge